

SENATE BILL 874

A2

2lr1211
CF HB 401

By: **Senator Ferguson**

Introduced and read first time: February 3, 2012

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2012

CHAPTER _____

1 AN ACT concerning

2 **Baltimore City – Alcoholic Beverages – Refillable Containers**

3 FOR the purpose of authorizing a certain Class B license to include a certain off-sale
4 privilege under a certain circumstance; creating in Baltimore City a refillable
5 container license; authorizing the Board of Liquor License Commissioners to
6 issue the license to a holder of ~~a Class B beer and light wine or a Class B beer,~~
7 ~~wine and liquor license issued for a restaurant~~ any class of alcoholic beverages
8 license issued by the Board except a Class C license and a Class M-G license;
9 specifying that a holder of the license may sell draft beer for consumption off the
10 licensed premises in a certain refillable container to a certain individual;
11 requiring a refillable container to meet certain requirements; prohibiting a
12 holder of a license from displaying or providing shelving for beer for
13 off-premises consumption; requiring an applicant for the license to complete a
14 certain form and pay a certain fee; requiring that certain advertising, posting of
15 notice, and public hearing requirements be met; specifying the term of the
16 license; requiring that receipts collected under the license be included in a
17 certain calculation of average daily receipts; specifying the hours of sale for the
18 license; allowing a holder of the license to ~~exercise the privileges of the license~~
19 ~~only if the licensed premises is open for business as a restaurant~~ refill only a
20 refillable container that was purchased from and was branded by the license
21 holder; authorizing the Board to adopt certain regulations; making a technical
22 change; and generally relating to alcoholic beverages in Baltimore City.

23 BY repealing and reenacting, without amendments,
24 Article 2B – Alcoholic Beverages

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 1–102(a)(1) and (2) ~~and~~, 8–203(a) and (b), and 12–108(a)(1)
 2 Annotated Code of Maryland
 3 (2011 Replacement Volume)

4 BY repealing and reenacting, with amendments,
 5 Article 2B – Alcoholic Beverages
 6 Section 6–201(d)(1)(v) and 12–113(c)
 7 Annotated Code of Maryland
 8 (2011 Replacement Volume)

9 BY adding to
 10 Article 2B – Alcoholic Beverages
 11 Section 8–203(e)
 12 Annotated Code of Maryland
 13 (2011 Replacement Volume)

14 ~~BY repealing and reenacting, with amendments,~~
 15 ~~Article 2B – Alcoholic Beverages~~
 16 ~~Section 12–113(e)~~
 17 ~~Annotated Code of Maryland~~
 18 ~~(2011 Replacement Volume)~~

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article 2B – Alcoholic Beverages**

22 1–102.

23 (a) (1) In this article the following words have the meanings indicated.

24 (22) (i) 1. “Restaurant” means an establishment:

25 A. Which accommodates the public;

26 B. Which is equipped with a dining room with facilities
 27 for preparing and serving regular meals; and

28 C. In which the average daily receipts from the sale of
 29 foods exceed the average daily receipts from the sale of alcoholic beverages.

30 2. However the board of license commissioners in any
 31 county by regulation may prescribe a different standard as to what constitutes a
 32 restaurant.

1 3. For a restaurant in Baltimore City, the average daily
2 receipts from the sale of food must be at least 40% of the total daily receipts of the
3 establishment.

4 (ii) In Baltimore City, the term “food” as used in the definition
5 of “restaurant”, whether the definition is established by State law or by regulations
6 adopted by the Board of License Commissioners, may not include any ingredient or
7 garnish used with or mixed with an alcoholic beverage that is prepared and served for
8 consumption on the licensed premises.

9 (iii) In Harford County a “restaurant” as used in § 5–201 and §
10 6–201(n)(9) of this article means a business establishment for the accommodation of
11 the public, fully equipped with a proper and adequate dining room, tables, chairs and
12 sufficient facilities for preparing and serving regular meals, as may be approved by the
13 Liquor Control Board. The Board and Department of Health shall approve its sanitary
14 facilities, running hot and cold water, equipment for the proper cleaning of dishes and
15 kitchenware and adequate toilets. At all times there must be sufficient food on the
16 premises for the regular serving of meals, with a proper sign or signs in front of the
17 establishment designating “restaurant” or food and beverages sold, and not
18 advertising any other business. In this establishment the average gross monthly
19 receipts from the sale of foods cooked or prepared and served on the premises where
20 the license is exercised, and other foods, commodities and items defined by the Liquor
21 Control Board, shall exceed 50 percent of the average monthly receipts from the sale of
22 beer and wine, except that a restaurant serving food and beverages whose gross
23 monthly receipts from the sale of food averages \$1,500 or more may not be required to
24 sell food and food commodities in excess of 50 percent of the average monthly receipts
25 from the sale of beer and wine.

26 (iv) The requirements of this section relating to average daily
27 receipts are not applicable to any licenses issued in Cecil County.

28 6–201.

29 (d) (1) (v) In an area coterminous with the 47th Alcoholic Beverages
30 District as that district existed before the Legislative Districting Plan was ordered by
31 the Maryland Court of Appeals on June 21, 2002, a Class B beer, wine and liquor
32 license issued for use in a restaurant:

33 1. [After] EXCEPT AS PROVIDED IN ITEM 5 OF THIS
34 SUBPARAGRAPH, AFTER July 1, 1991 may not include an off–sale alcoholic beverages
35 privilege;

36 2. Before July 1, 1991 with an on–sale alcoholic
37 beverages privilege only may not be changed or altered to include an off–sale alcoholic
38 beverages privilege;

1 3. Before July 1, 1991 with both on- and off-sale
 2 alcoholic beverages privileges may continue to be sold, renewed, or transferred within
 3 the 47th Alcoholic Beverages District with both privileges; [and]

4 4. Except as provided in subparagraph (vi) of this
 5 paragraph, before July 1, 1991 may not include an off-sale privilege for sales of
 6 alcoholic beverages from 12 midnight on Saturday to 2 a.m. on Monday; AND

7 5. MAY INCLUDE AN OFF-SALE PRIVILEGE FOR
 8 SALES OF REFILLABLE CONTAINERS UNDER A REFILLABLE CONTAINER LICENSE
 9 ISSUED IN ACCORDANCE WITH § 8-203(E) OF THIS ARTICLE.

10 8-203.

11 (a) The provisions of this section only apply in Baltimore City.

12 (b) In this section, "Board" means the Board of License Commissioners of
 13 Baltimore City.

14 **(E) (1) THERE IS A REFILLABLE CONTAINER LICENSE.**

15 **(2) THE BOARD MAY ISSUE A REFILLABLE CONTAINER LICENSE**
 16 **TO A HOLDER OF ~~A CLASS B BEER AND LIGHT WINE OR A CLASS B BEER, WINE~~**
 17 **~~AND LIQUOR LICENSE ISSUED FOR A RESTAURANT~~ ANY CLASS OF ALCOHOLIC**
 18 **BEVERAGES LICENSE ISSUED BY THE BOARD EXCEPT A CLASS C LICENSE AND A**
 19 **CLASS M-G LICENSE.**

20 **(3) A REFILLABLE CONTAINER LICENSE ENTITLES THE HOLDER**
 21 **TO SELL DRAFT BEER FOR CONSUMPTION OFF THE LICENSED PREMISES:**

22 **(I) ~~IN~~ SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION,**
 23 **IN A REFILLABLE CONTAINER WITH A CAPACITY OF NOT LESS THAN 32 OUNCES**
 24 **AND NOT MORE THAN 128 OUNCES; AND**

25 **(II) ONLY TO AN INDIVIDUAL WHO HAS PURCHASED FOOD**
 26 **OR AN ALCOHOLIC BEVERAGE FROM THE LICENSED PREMISES.**

27 **(4) TO BE USED AS A REFILLABLE CONTAINER UNDER**
 28 **PARAGRAPH (3)(I) OF THIS SUBSECTION, A CONTAINER SHALL:**

29 **(I) BE SEALABLE;**

30 **(II) BE BRANDED WITH AN IDENTIFYING MARK OF THE**
 31 **LICENSE HOLDER;**

1 **(III) BEAR THE FEDERAL HEALTH WARNING STATEMENT**
2 **REQUIRED FOR CONTAINERS OF ALCOHOLIC BEVERAGES UNDER 27 C.F.R.**
3 **16.21;**

4 **(IV) DISPLAY INSTRUCTIONS FOR CLEANING THE**
5 **CONTAINER; AND**

6 **(V) BEAR A LABEL STATING THAT:**

7 **1. CLEANING THE CONTAINER IS THE**
8 **RESPONSIBILITY OF THE CONSUMER; AND**

9 **2. THE CONTENTS OF THE CONTAINER ARE**
10 **PERISHABLE AND SHOULD BE REFRIGERATED IMMEDIATELY AND CONSUMED**
11 **WITHIN 48 HOURS AFTER PURCHASE.**

12 ~~(4)~~ **(5)** **IN AREAS OF THE PREMISES THAT ARE ACCESSIBLE TO**
13 **THE PUBLIC, A HOLDER OF A REFILLABLE CONTAINER LICENSE MAY NOT**
14 **DISPLAY OR PROVIDE SHELVING FOR BEER FOR OFF-PREMISES CONSUMPTION.**

15 ~~(5)~~ **(6)** **BEFORE THE BOARD ISSUES A REFILLABLE CONTAINER**
16 **LICENSE TO AN APPLICANT:**

17 **(I) THE APPLICANT SHALL:**

18 **1. COMPLETE THE FORM THAT THE BOARD**
19 **PROVIDES; AND**

20 **2. PAY AN ANNUAL LICENSE FEE OF ~~\$500;~~ AND:**

21 **A. \$500 FOR AN APPLICANT WHOSE ALCOHOLIC**
22 **BEVERAGES LICENSE DOES NOT HAVE AN OFF-SALE PRIVILEGE; OR**

23 **B. \$50 FOR AN APPLICANT WHOSE ALCOHOLIC**
24 **BEVERAGES LICENSE HAS AN OFF-SALE PRIVILEGE.**

25 **(II) THE SAME ADVERTISING, POSTING OF NOTICE, AND**
26 **PUBLIC HEARING REQUIREMENTS AS THOSE FOR THE LICENSE THAT THE**
27 **APPLICANT HOLDS SHALL BE MET.**

28 ~~(6)~~ **(7)** **THE TERM OF A REFILLABLE CONTAINER LICENSE**
29 **ISSUED TO A SUCCESSFUL APPLICANT IS THE SAME AS THAT OF THE LICENSE**
30 **THAT THE APPLICANT HOLDS.**

1 ~~(7)~~ **(8)** RECEIPTS COLLECTED UNDER A REFILLABLE
2 CONTAINER LICENSE ARE TO BE INCLUDED IN THE CALCULATION OF AVERAGE
3 DAILY RECEIPTS FROM THE SALE OF ALCOHOLIC BEVERAGES UNDER
4 § 1-102(A)(22)(I) **3** OF THIS ARTICLE.

5 ~~(8)~~ **(9)** THE HOURS OF SALE FOR A REFILLABLE CONTAINER
6 LICENSE: ~~ARE THE SAME~~

7 **(I)** BEGIN AT THE SAME TIME AS THOSE FOR THE LICENSE
8 ALREADY HELD BY THE PERSON TO WHOM THE REFILLABLE CONTAINER
9 LICENSE IS ISSUED; AND

10 **(II)** END AT MIDNIGHT.

11 ~~(9)~~ **(10)** ~~THE HOLDER OF A REFILLABLE CONTAINER LICENSE~~
12 ~~MAY EXERCISE THE PRIVILEGES OF THE LICENSE ONLY IF THE LICENSED~~
13 ~~PREMISES IS OPEN FOR BUSINESS AS A RESTAURANT~~ A LICENSE HOLDER MAY
14 REFILL ONLY A REFILLABLE CONTAINER THAT WAS PURCHASED FROM AND WAS
15 BRANDED BY THE LICENSE HOLDER.

16 ~~(10)~~ **(11)** THE BOARD MAY ADOPT REGULATIONS TO CARRY OUT
17 THIS SUBSECTION, INCLUDING A LIMIT ON THE NUMBER OF REFILLABLE
18 CONTAINER LICENSES TO BE ISSUED.

19 12-108.

20 (a) **(1)** A licensee licensed under this article, or any employee of the
21 licensee, may not sell or furnish any alcoholic beverages at any time:

22 (i) To a person under 21 years of age for the underage person's
23 own use or for the use of any other person; or

24 (ii) To any person who, at the time of the sale, or delivery, is
25 visibly under the influence of any alcoholic beverage.

26 12-113.

27 (c) **[No] EXCEPT AS PROVIDED IN § 8-203(E) OF THIS ARTICLE, NO** retail
28 dealer, or agent or employee of such retail dealer shall refill any container of alcoholic
29 beverages with any substance whatsoever after such container has once been emptied
30 of its original contents.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 July 1, 2012.